

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS : MDL No. 2002
ANTITRUST LITIGATION : Case No: 08-md-02002

**THIS DOCUMENT APPLIES TO :
ALL DIRECT PURCHASER ACTIONS :**

**DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS
MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC. FOR
PRELIMINARY CERTIFICATION OF CLASS ACTION FOR PURPOSES OF
SETTLEMENT, AND FOR APPROVAL OF NOTICE PLAN**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) move the Court to: (1) preliminarily approve the settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O’ Lakes, Inc. (“Moark”) on the terms and conditions set forth in the “Settlement Agreement between Direct Purchaser Plaintiffs and Moark” (“Settlement” or “Settlement Agreement”), submitted concurrently herewith; (2) preliminarily certify a class for purposes of the Settlement; and (3) approve dissemination of notice of the settlement to the class in the manner suggested herein.

This motion is based on the Memorandum of Law in Support and Declaration of Michael D. Hausfeld, submitted herewith, and is made on the following grounds:

1. The Settlement falls within the range of possible approval and is “sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard,” the legal standard for preliminary approval of a class action settlement. *See In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D. Pa. May 11, 2004) (citation omitted).
 2. The Settlement is the result of extensive arm’s-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004

WL 1068807 at *1 (citations omitted); *Thomas v. NCO Financial Sys.*, No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002).

3. The expense and uncertainty of continued litigation against Moark and the likelihood of appeal militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *See In re Reneron End-Payor Antitrust Litig.*, No. Civ. 02-2007 FSH, 2005 WL 2230314 at *17 (D.N.J. Sept. 13, 2005).

4. The settlement will provide the proposed class with valuable cash consideration. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *2.

5. Plaintiffs' Counsel believe that Moark's agreement to cooperate, as described in the Settlement Agreement, will greatly assist in pursuing the claims against the other Defendants. *See In re Ikon Office Supplies Inc. Securities Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).

6. The Settlement Class, as defined in the Settlement Agreement, meets the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3).

7. The notice plan is "the best notice that is practicable under the circumstances," as required by Fed. R. Civ. P. 23(c)(2)(B) and is "reasonable," as required by Fed. R. Civ. P. 23(e).

Dated: June 4, 2010

Respectfully submitted,

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